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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

SEP 27 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Interconnection and Resale) CC Docket No. 94-54
Obligations Pertaining to)
Commercial Mobile Radio Services)

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OPPOSITION TO PETITION FOR PARTIAL RECONSIDERATION

In accordance with Section 1.429(f) of the Commission's rules, ARDIS Company ("ARDIS") is submitting this opposition to the Petition For Partial Reconsideration filed by AT&T Corp. ("AT&T")¹ in the above-captioned proceeding.² As discussed below, ARDIS takes no position on whether AT&T's cellular data service should be subject to the Commission's CMRS resale requirement. ARDIS does, however, oppose any suggestion that non-covered SMR data offerings, such as ARDIS, are functionally similar to cellular and broadband PCS data services and should be subject to similar regulatory requirements.

I. INTRODUCTION AND SUMMARY

In the First Report and Order in this proceeding, the Commission attempted to formulate the appropriate level of resale obligations to be applied to various commercial

¹ AT&T Corp., Petition For Partial Reconsideration, CC Docket 94-54 (filed Aug. 23, 1996) [hereinafter *AT&T Petition*].

² *Interconnection and Resale Obligations Relating To Commercial Mobile Radio Services*, CC Docket No. 94-54, FCC No. 96-263 (rel. July 12, 1996) [hereinafter *First Report and Order*].

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mobile radio service ("CMRS") operators, such as cellular, broadband personal communications service ("PCS"), specialized mobile radio ("SMR"), narrowband PCS, and paging. After developing an extensive record, the Commission concluded that current market conditions are such that the existing cellular resale obligation should continue to apply to cellular operators and should be extended to broadband PCS and certain "covered" SMR providers³ until five years after the last group of initial licenses for currently allotted broadband PCS spectrum is awarded.⁴

The Commission expressly excluded all other CMRS providers, such as paging, narrowband PCS, and non-covered SMR operators, from the CMRS resale rule. In doing so, the Commission found that the record contained "persuasive arguments that competitive conditions render a resale rule an unnecessary burden" as applied to these licensees.⁵ In particular, the Commission noted that cellular, broadband PCS, and covered SMR providers are the only CMRS carriers competing against each other for customers in the mass market for two-way switched voice and data services and that, at least for now, other CMRS

³ "Covered" SMR providers include two classes of SMR licensees: (1) 800 MHz and 900 MHz SMR licensees that hold geographic area licenses, and (2) incumbent wide-area SMR licensees, defined as those that have obtained extended implementation authorizations in the 800 MHz or the 900 MHz SMR service, either by rule or by waiver. In addition, within each of these classes, "covered SMR providers" encompasses only those licensees "that offer real-time, two-way switched voice service that is interconnected with the public switched network, either on a stand-alone basis or packaged with other telecommunications services." *First Report and Order*, ¶ 19.

⁴ *Id.*, ¶¶ 17-18, 24.

⁵ *Id.*, ¶ 21.

operators are not positioned to compete successfully for these customers.⁶ Similarly, with respect to SMRs, the Commission found that "local SMR licensees offering mainly dispatch services to specialized customers" and "licensees offering only data, one-way, or stored voice services on an interconnected basis" should not be included within the CMRS resale rule because these operators do not compete substantially with cellular and broadband PCS and because the costs of applying a mandatory resale requirement to these licensees would outweigh the benefits.⁷

ARDIS fully supports the Commission's rationale in exempting non-covered SMRs from the CMRS resale rule. AT&T, however, maintains that the non-covered SMR exclusion will place that company's cellular data service at a competitive disadvantage vis-a-vis non-covered SMR data services. On this basis, AT&T argues that there is no justification for exempting non-covered SMR data offerings from the resale rule while including cellular and broadband PCS data services.⁸ AT&T asks the Commission to reconsider its decision and to exempt cellular and PCS data services, in addition to non-covered SMR services, from the CMRS resale requirement.⁹

As mentioned, ARDIS takes no position on whether AT&T's cellular data service or other cellular and PCS data offerings should be subject to the CMRS resale requirement.

⁶ *Id.*

⁷ *Id.*

⁸ *AT&T Petition* at 5-6.

⁹ *Id.* at 6.

Contrary to AT&T's claims, however, the data -- and other -- services offered by non-covered SMRs are not functionally similar to cellular and broadband PCS data -- and other -- offerings. As discussed in detail below, cellular and broadband PCS-based services have access to considerably more spectrum than non-covered SMRs, allowing cellular and broadband PCS operators to offer higher capacity data service as well as bundled voice and data. In addition, cellular and broadband PCS-based data services are able to compete in a much broader market than non-covered SMRs, which, due to capacity constraints, are generally targeted toward specialized, niche markets. Finally, in many areas, non-covered SMRs have access to such a limited amount of spectrum that resale is virtually impossible. For all of these reasons, ARDIS submits that the Commission properly exempted non-covered SMR services from the CMRS resale requirement.

II. CELLULAR AND BROADBAND PCS-BASED DATA SERVICES ARE NOT SIMILAR TO NON-COVERED SMR OFFERINGS.

In its *Petition*, AT&T first asserts that "the data services provided by the SMR and unlicensed operators and AT&T are viewed by customers as substitutable and competitive with each other."¹⁰ AT&T then cites *Garrett v. FCC*,¹¹ and *Melody Music, Inc. v. FCC*¹² for the proposition that the Commission has a legal duty to treat "similarly situated entities in a like manner." Based on this analysis, AT&T contends that there is "no

¹⁰ *Id.* at 5.

¹¹ 513 F.2d 1056, 1060 (D.C. Cir. 1975).

¹² 345 F.2d 703, 732-733 (D.C. Cir. 1965).

justification" for exempting non-covered SMR data services from the Commission's resale requirement while subjecting cellular and broadband PCS-based data offerings to this requirement "simply because they are provided over different spectrum."¹³

ARDIS agrees that "the law should treat similarly situated persons similarly."¹⁴ ARDIS does not agree, however, that non-covered SMR offerings are "substitutable and competitive" with cellular and broadband PCS-based services. Initially, there is a tremendous difference in the quantity of spectrum available to non-covered SMR operators and the quantity of spectrum available to cellular and broadband PCS service providers. Cellular carriers have access to 25 MHz of spectrum,¹⁵ and broadband PCS carriers have access to either 10 MHz or 30 MHz of spectrum.¹⁶ By contrast, non-covered, site-specific 800 MHz SMR systems, such as ARDIS, typically have access to a single 25 kHz channel pair. Even if a site-specific non-covered 800 MHz SMR operator is able to secure a license for more than one channel, the quantity of spectrum available to cellular and broadband PCS operators is an order of magnitude greater -- ten 25 kHz channel pairs still only yield 2 percent of the spectrum assigned to each cellular provider. This limited amount of spectrum prevents most non-covered SMRs from offering voice services and significantly reduces the

¹³ *AT&T Petition* at 5.

¹⁴ *United States v. Johnson*, 634 F.2d 94, 96 (3d Cir. 1980) (citing *Royster Guano Co. v. Virginia*, 253 U.S. 412, 415 (1920)).

¹⁵ 47 C.F.R. § 2.105.

¹⁶ See 47 C.F.R. § 24.229. The A, B, and C Blocks each have 30 MHz of spectrum while the D, E, and F Blocks each have 10 MHz of spectrum.

amount of data they can transmit and the number of customers they can serve. Thus, while cellular and broadband PCS systems can devote several hundred channels to data-based applications, in many markets, the entire ARDIS system is limited to a single 25 kHz channel pair. As recognized by the Commission, this quantitative difference has a significant impact on the ability of a non-covered SMR system to compete with cellular or broadband PCS-based offerings.

Similarly, because of the capacity constraints faced by non-covered SMR operators, these licensees typically target their service toward specialized, niche markets. Examples of niche application offered by ARDIS include: (1) the instant checking of drivers' records by law enforcement officers; (2) the ordering of parts, machine histories, and billing information by field service personnel; and (3) the processing of data for the pickup and delivery of rental cars by customer service personnel. Cellular and broadband PCS operators are able to serve a much broader market. For instance, as noted by AT&T, its cellular-based circuit data and packet services transmit data from common, widely used devices such as modems and fax machines.¹⁷ Further, because cellular and PCS-based data services can be bundled with voice services in a single package, they have much greater mass market appeal than non-covered SMRs, which, due to spectrum constraints, cannot bundle voice and data services.

Finally, spectrum limitations make it difficult, if not impossible, for non-covered SMRs to engage in resale. As stated above, non-covered SMRs have access to extremely

¹⁷ *AT&T Petition* at 4 n.14.

limited quantities of spectrum compared to cellular and broadband PCS providers and, in many cases, provide service using a single 25 kHz channel pair. In such circumstances, a mandatory resale requirement would be effectively mooted by the fact that these systems have no excess capacity for providing service to anyone, let alone for creating the potential for discrimination against resellers.

III. CONCLUSION

For the reasons set forth above, ARDIS urges the Commission to affirm its decision exempting non-covered SMR providers from the CMRS resale rule. These entities do not compete with cellular and broadband PCS offerings and, because of the limited amount of spectrum available to non-covered SMR licensees, subjecting these operators to a mandatory resale obligation will do nothing to promote the policy goals associated with an affirmative resale requirement.

Respectfully submitted,

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